

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY  
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UNITED STATES :  
: 06 Cr. 808  
: Order  
: -against-  
: EDWIN TORRES,  
: Defendant.  
-----X  
WOOD, U.S.D.J.:

By letter dated January 30, 2008, the Government moves in limine for an order admitting certain co-conspirator statements that the Government intends to elicit at Defendant Torres' trial.

In order to admit a co-conspirator statement under Rule 801(d)(2)(E), the Court must find, by a preponderance of the evidence, "first, that a conspiracy existed that included the defendant and the declarant; and second, that the statement was made during the course of and in furtherance of that conspiracy." United States v. Gigante, 166 F.3d 75, 82 (2d Cir. 1999). "In determining whether a conspiracy existed, the district court may consider the hearsay statement itself, but there must be some independent corroborating evidence of the defendant's participation in the conspiracy." United States v. Desena, 260 F.3d 150, 158 (2d Cir. 2001) (internal quotation omitted); see also United States v. Perry, 132 F.3d 373, 380 (7th Cir. 1997) ("This [corroboration] requirement can be satisfied by the testimony of nonconspirators or by corroboration of facts

contained in the statements of the conspirators.").

Because the Government has not submitted any independent corroborating evidence of Defendant's participation in the conspiracy, admission of the co-conspirator's statement is premature. Accordingly, the Court will rule on the Government's motion at trial, unless the Government shows good cause to hold a pre-trial hearing.

SO ORDERED

Dated: New York, New York  
July 31, 2008

Kimba M. Wood  
Kimba M. Wood  
United States District Judge